Achal Das vs. Smt. Shanti Devi & Ors.

SB Civil 1st Appeal No.108/1988

Date of Judgment: 25th April, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.B.K.Bhatnagar for the appellant.

Mr.Manish Shishodia]
Mr.Mohd. Aslam Naushad] for respondent Nos.1 and 2.

Heard learned counsel for the parties.

This appeal is filed by the appellant against the impugned judgment and decree dated 04.06.88 passed by the learned District & Sessions Judge, Sirohi, arising out of Civil Original Suit No.117/1984.

A suit was filed by the appellant stating inter alia that a plot was purchased by the plaintiff on 04.05.46 by a registered sale deed. The plot was situated in village Sarupganj, Tehsil Pindwara, District Sirohi, through Mamraj, s/o Laduram. Mamraj having died, the legal representatives were impleaded as party -respondents.

It was alleged in the plaint that the legal representatives of the deceased Mamraj once again sold the plot in favour of Shanti Devi respondent No.1, on 20.03.79. The plaintiff filed the suit to claim possession and declaration for cancellation of the sale deed in favour of Shanti Devi. The defense of the respondents was that on the alleged date of purchase by the plaintiff , i.e. on 04.05.46 Transfer of Property Act, 1882 was not applicable in the State of Sirohi. Therefore, no rights were got transferred in favour of the plaintiff by the alleged sale deed because as and when the sale is effected in the State of Sirohi, it was necessary that a Sanad was got issued, which in the instant case, was never done and, therefore, no title passed on to plaintiff appellant and, therefore, the sale made in favour of Shanti Devi was a valid sale and the same was made by the legal representatives of Mamraj validly. On the basis of the pleadings, followings issues were framed:-

> "1- आया वादी ने विवादित प्लोट रजिस्टर्ड विक्रय लेख के जरिये स्वर्गीय मामराज से खरीद कर कब्जा प्राप्त किया ?.....वादी
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> 2- आया वादी विक्रय लेख दिनांक 20.3.79 एवं 22.9.80 अवैध है और निरस्त किये जाने योग्य हैं?....वादी

3- आया वादी विवादित प्लोट के मालकी की घोषणा एवं कब्जा प्लोट प्राप्त करने का अधिकारी हैं ?....वादी

4- आया वादी विवादित प्लोट के उपयोग व उपभोग का हर्जा प्रतिमाह रूपये 100 की दर से प्राप्त करने का अधिकारी हैं? ....वादी

5- आया प्रतिवादीगण का कब्जा विवादित प्लोट पर गत तीस वर्षों से लगातार शान्तिपूर्वक बेरोकटोक चला आ रहा है, यदि हाँ तो क्या प्रतिवादीगण का मुखालफाना कब्जा हो चुका हैं, जिससे वादी के स्वामित्व के हक यदि प्रमाणित होने है उस हालत में स्वत: समाप्त हो चुके हैं?....प्रतिवादी

6- आया वाद अवधि बाहर है ?....प्रतिवादी

7- आया पट्टा सनद सं. 542 तहसील नं.201 फि.अ.8.45 विवादित भूमि का हैं?....वादी

8- आया प्रतिवादीगण धारा 35 ए सी पी.सी. के अन्तर्गत विशेष खर्चा प्राप्त करने के अधिकारी हैं ?....प्रतिवादी

9- आया वादी ने प्लोट की मालिकी के घोषणा की मालियत नहीं आकी है और न कोई फीस

भरी है।अत: वाद काबिले खारिज हैं ?

..... प्रतिवादी 1.3.4.8

10- यह कि वादी ने कब्जे की दाद का मूल्याकंन नहीं किया है अत: बिना मूल्यांकन किये व कोर्ट फिस भरे कब्जे की डिक्री प्राप्त नहीं कर सकता हैं ?....प्रतिवादी

11- आया कोर्ट फीस ना काफी है ?

..... प्रतिवादी...3, 4, 8

12- दादरसी क्या ।"

The most important issue in this regard is issue No.1 wherein it was required of the plaintiff that he establish that the title is passed on to him validly. The trial court, after considering the case of the parties, came to the conclusion that in view of the legal provisions prevailing in the State of Sirohi, no title passed on to the plaintiff appellant. Once this finding was recorded what followed was that the plaintiff was not entitled to recover possession, issue No.3 was also held against the plaintiff.

The learned counsel for the appellant arguing the appeal stated that Ex.1 , sale deed, in favour of the plaintiff is a registered document. It evidences that the sale deed was made in his favour on the alleged date i.e. 04.05.46. On being asked that when the Transfer

of Property Act, 1882 was not applicable to the State of Sirohi, could any title pass on the strength of Ex.1, the learned counsel for the appellant was not able to show any law, but for Ex.1. If any title did not pass on the strength of Ex.1, then the only other aspect was the fact of recovery of possession. In the plaint itself, the plaintiff has not categorically stated that after the sale was made, he continued to be in possession. So the trial court found that no title passed on to him after 1979, he was not in possession. The pleadings in suit also indicate that the possession was not his, after 1979.

In the aforesaid circumstances, it is difficult to see any legal title in favour of the plaintiff when by operation of law no title is passed , Ex. 1 is a registered document but that registration is of no consequence because a registered document transfers the right only when the Transfer of Property Act , 1882 was applicable . Undoubtedly , in the State of Sirohi, in 1946, Transfer of Property Act , 1882 was not applicable. Therefore, on the strength of Ex.1, no title passed on to him. For a valid transfer, the transferee was required to obtain a Sanad from the State of Sirohi. Admittedly, no such document was obtained from the State of Sirohi.

In that view of the matter, the findings of issue No. 1

and 3 , as recorded by the trial court , are not liable to be disturbed. If these findings are not liable to be disturbed no title favours in the appellant- plaintiff.

There is no force in the appeal, the same is dismissed.

(BHAGWATI PRASAD), J.

L.George